

KEEGAN, WERLIN & PABIAN, LLP

ATTORNEYS AT LAW
265 FRANKLIN STREET
BOSTON, MASSACHUSETTS 02110-3113

(617) 951-1400

TELECOPIERS:
(617) 951-1354
(617) 951-0586

October 29, 2004

Mary L. Cottrell, Secretary
Department of Telecommunication and Energy
One South Station, 2nd Floor
Boston, MA 02202

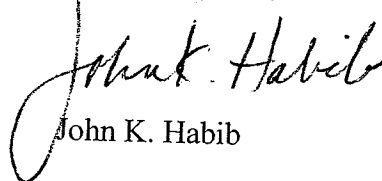
Re: D.T.E. 04-61 – Petition of Boston Edison Company and Commonwealth Electric
Company for Approvals Relating to the Termination of Power Purchase
Agreements with MASSPOWER

Dear Secretary Cottrell:

Enclosed please find Boston Edison Company and Commonwealth Electric
Company d/b/a NSTAR Electric's Consolidated Motion for a Protective Order in the
above-referenced proceeding.

Thank you for your attention to this matter.

Very truly yours,


John K. Habib

Enclosures

cc: Service List
Joan Foster Evans, Hearing Officer (2)
Colleen McConnell, Assistant Attorney General (2)

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Boston Edison Company and
Commonwealth Electric Company
for Approvals Relating to the Termination
of Power Purchase Agreements with
MASSPOWER

D.T.E. 04-61

**CONSOLIDATED MOTION OF BOSTON EDISON COMPANY AND
COMMONWEALTH ELECTRIC COMPANY FOR A PROTECTIVE ORDER¹**

I. INTRODUCTION

On July 7, 2004, Boston Edison Company ("Boston Edison") and Commonwealth Electric Company ("Commonwealth," together, the "Companies") filed with the Department of Telecommunications and Energy (the "Department") a Petition (the "Petition") for Approvals Relating to Termination of Purchase Power Agreements (the "PPAs"). The Petition seeks approval by the Department, pursuant to G.L. c. 164, §§ 1A, 1G, 76, 94, and 94A, of (a) the Termination Agreement between the Companies and MASSPOWER (collectively, the "MASSPOWER Termination Agreement"); and (b) approval of ratemaking treatment relating to the MASSPOWER Termination Agreement.

During the proceeding, the Companies filed several exhibits in response to information and record requests issued by the Department and the Office of the Attorney General (the "Attorney General") that contained: (1) competitively sensitive information relating to the Companies' 2003 Auction of its purchase power agreements (the "2003

¹ This Motion is intended to supersede the Companies' Motion for Protective Order filed on July 7, 2004 in this proceeding. This Motion seeks protective treatment for all confidential exhibits filed in the proceeding since its inception.

Auction”), including information about (a) individual bids; (b) the Companies’ internal evaluations and analyses of bids; and (c) the Companies’ negotiating strategies (see Attachment 1, hereto). Moreover, as part of the Companies’ initial filing and in response to information and record requests, Boston Edison submitted exhibits that, in part, include information regarding the Companies’ projections of future energy prices and its forecasts of payments to be made pursuant to existing PPAs with MASSPOWER and PPAs with other parties (see Attachment 2, hereto). For the reasons set forth below, the Companies seeks a protective order from the Department to prohibit public disclosure of the proprietary, confidential and sensitive competitive information listed in Attachments 1 and 2 (together, the “Confidential Exhibits”).

II. LEGAL STANDARD

Confidential information may be protected from public disclosure in accordance with G.L. c. 25, § 5D, which states in part that:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

In interpreting the statute, the Department has held that:

... [T]he burden on the company is to establish the need for protection of the information cited by the company. In determining the existence and extent of such need, the Department must consider the presumption in favor of disclosure and the specific reasons why disclosure of the disputed information benefits the public interest.

The Berkshire Gas Companies et al., D.P.U. 93-187/188/189/190, at 16 (1994) as cited in Hearing Officers Ruling On the Motion of Boston Gas Companies for Confidentiality, D.P.U. 96-50, at 4 (1996).

In practice, the Department has often exercised its authority to protect sensitive market information. For example, the Department has determined specifically that competitively sensitive information, such as price terms, are subject to protective status:

The Department will continue to accord protective status when the proponent carries its burden of proof by indicating the manner in which the price term is competitively sensitive. Proponents generally will face a more difficult task of overcoming the statutory presumption against the disclosure of other terms, such as the identity of the customer.

Standard of Review for Electric Contracts, D.P.U. 96-39, at 2, Letter Order (August 30, 1996). See also Colonial Gas Companies, D.P.U. 96-18, at 4 (1996) (the Department determined that price terms were protected in gas supply contracts and allowed Colonial Gas Companies' request to protect pricing information including all "reservation fees or charges, demand charges, commodity charges and other pricing information").

Moreover, the Department has recognized that competitively sensitive terms in a competitive market should be protected and that such protection is desirable as a matter of public policy:

The Department recognizes that the replacement gas purchases . . . are being made in a substantially competitive market with a wide field of potential suppliers. This competitive market should allow LDC's to obtain lower gas prices for the benefit of their ratepayers. Clearly the Department should ensure that its review process does not undermine the LDC's efforts to negotiate low cost flexible supply contracts for their systems. The Department also recognizes that a policy of affording contract confidentiality may add value to contracts and provide benefits to ultimate consumers of gas, the LDC's ratepayers, and therefore may be desirable for policy reasons.

The Berkshire Gas Companies et al., D.P.U. 93-187/188/189/190, at 20 (1994).

III. INFORMATION REGARDING BID INFORMATION AND THE COMPANIES' ANALYSIS OF FUTURE ENERGY COSTS IS PROPRIETARY, CONFIDENTIAL AND SENSITIVE AND WARRANTS PROTECTION FROM PUBLIC DISCLOSURE

The Companies request confidential treatment of information reflected in the Confidential Exhibits relating to: (1) bids submitted in the 2003 Auction (see Attachment 1); and (2) price and payment forecasts used to compare the value of the bids to the Companies' existing PPAs (see Attachment 2). The Companies are seeking protected treatment for the Confidential Exhibits for several reasons.

First, with regard to the Confidential Exhibits listed on Attachment 1, these exhibits contain information regarding the names of bidders in the 2003 Auction, their respective bids, and communications between the Companies, its consultant and the bidders themselves regarding the Companies' bid-evaluation process. It is important that auction-related information be held confidential because its disclosure could harm financially the parties that participated in the 2003 Auction, as well as the interests of the Companies' customers in other asset divestitures. The Companies has treated the names of bidders, communications with the bidders and bid information and analysis (the "Auction Information") as confidential throughout the auction process. The Auction Information has been tightly controlled and has not been distributed outside of the Companies, its consultant or the Companies' counsel, jurisdictional public regulatory agencies, or, to the extent applicable, outside management or counsel of the bidders. All bidders were told that the auction process would be conducted in a highly confidential manner. The process was designed this way to encourage participation, promote competition in the bidding process, and maximize the proceeds from the bidding. Any

disclosure now could significantly damage the 2003 Auction. The Department should not allow the divestiture to be compromised by unnecessary disclosure of bid information.

Moreover, if the Auction Information is disclosed, the effectiveness and competitiveness of auctions for PPAs will be harmed substantially. Indeed, the Companies may be required to commence the auction process again, if the agreements to terminate the Companies' PPAs are not consummated for some unanticipated reason. In this case, the bids submitted in the 2003 Auction, if released, may make bidders more reluctant to submit responses in any subsequent auction. Thus, the release of auction or bid information at this time would potentially prejudice any future auction process and ultimately harm the Companies' customers, to the extent that a future auction process fails to yield an interested buyer or yields a buyer that offers to purchase the Companies' PPAs under less favorable terms than those offered to date.

In fact, public release of the information in the Confidential Exhibits will disclose the very types of information that the Department has previously and consistently held to be confidential because the release of such information would "seriously undermine" the Companies' negotiating position and thus, result in customers not realizing the maximum amount of mitigation. Western Massachusetts Electric Companies, D.T.E. 99-101, at 3 (2002), citing Boston Edison Companies, D.T.E. 99-16 (1999); Western Massachusetts Electric Companies, D.T.E. 99-56 (1999). See also Canal Electric Companies/Cambridge Electric Light Companies/Commonwealth Electric Companies, D.T.E. 02-34 (Tr. A at 19 (June 12, 2002)) and Cambridge Electric Light Companies, D.T.E. 01-94 (May 9, 2002 Approval by the Department of Amended Motion of Cambridge Electric Light Companies for a Protective Order).

With regard to the Confidential Exhibits referenced in Attachment 2, the release of these exhibits to the public would compromise the ability of the Companies to negotiate future purchase-power deals. The market forecast data is considered proprietary by the company that produced it, and was provided to the Companies pursuant to a confidentiality agreement. More importantly, however, these projections must be protected from public disclosure because the Companies use this information to evaluate other PPA mitigation proposals, and value their existing PPAs. The Companies, as well as Cambridge Electric Light Companies and Commonwealth Electric Companies, have not yet completed the divestiture of all of their existing PPAs and are in active negotiations with other parties. If other parties had access to the details of the Companies' updated projections and assumptions regarding future energy prices and the value of their existing PPAs, the Companies' ability to negotiate the best deals possible on behalf of customers would be compromised.

Consistent with recent precedent, the Companies request that the Department protect the Confidential Exhibits listed in Attachment 1 from public disclosure for a period of ten years from the date of the Department's final order in this matter. Canal Electric Companies/Cambridge Electric Light Companies/Commonwealth Electric Companies, D.T.E. 02-34 (Tr. 1 at 12-13 (July 1, 2002)). In addition, the Companies requests that the Department protect the Confidential Exhibits listed in Attachment 2 for a period of three years from the date of the Department's final order in this matter. Id. The Companies recognizes that it is in the public interest to make submitted documents available to the public at some point in the future and believes that the respective ten- and

three-year periods balance: (1) the interests of the Companies' customers and the parties to 2003 Auction with (2) the interest in making the material public.

Accordingly, both the information and the Companies' strategic use of the information presented in the Confidential Exhibits should be protected from public disclosure through the issuance of a protective order because the information is proprietary, confidential and competitively sensitive. The disclosure of this sensitive information would undermine the Companies' ability to maximize their mitigation efforts, which inures to the benefit of the Companies' customers. The Department has protected similar information relating to analyses of the benefits of restructured or terminated PPAs submitted in previous proceedings. Therefore, the Companies requests that the Department protect the Confidential Exhibits from public disclosure, consistent with G.L. c. 25, § 5 and Department precedent.

IV. CONCLUSION

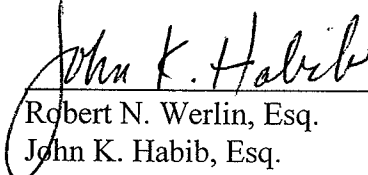
Boston Edison and Commonwealth respectfully request that the Confidential Documents be held confidential, not be placed in the public docket and be disclosed only to the Department. Parties to the case may request to review the exhibits, subject to the terms of a mutually agreed Non-Disclosure Agreement. This approach will allow the Department and parties to the proceeding to review the Companies' analysis of the MASSPOWER Termination Agreement while ensuring that proprietary, confidential and sensitive market-related information will remain confidential.

WHEREFORE, for the reasons set forth herein, the Companies respectfully request that the Department allow the Companies' Motion for a Protective Order.

Respectfully submitted,

**BOSTON EDISON COMPANY
COMMONWEALTH ELECTRIC COMPANY**

By Their Attorneys,



Robert N. Werlin, Esq.
John K. Habib, Esq.
Keegan, Werlin & Pabian, LLP
265 Franklin Street
Boston, Massachusetts 02110
(617) 951-1400 (telephone)
(617) 951-1354 (facsimile)

Date: October 29, 2004

ATTACHMENT 1

Exh. DTE-1-1(a)(Att) through Exh. DTE-1-1(t)(Att)

Exh. DTE-1-9 (Att)

Exh. DTE-1-9 (Supp)(Att)

Exh. AG-1-5(a)(Att) through AG-1-5(h)(Att)

ATTACHMENT 2

Exh. NSTAR 1, Appendix A
Exh. NSTAR-GOI-2
Exh. NSTAR-BEC-GOL-3
Exh. NSTAR-BEC-GOL-4
Exh. NSTAR-COM-GOL-3
Exh. NSTAR-COM-GOL-4
Exh. NSTAR-RBH-5
Exh. NSTAR-RBH-6
Exh. DTE-1-2 (Att)
Exh. DTE-1-2 (Supp)(Att)
Exh. DTE-1-3 (Att)
Exh. DTE-1-3 (Supp)(Att)
Exh. DTE-1-4 (Att)
Exh. DTE-1-4 (Supp)(Att)
Exh. DTE-1-5 (Att)
Exh. DTE-1-7 (a)(Att)
Exh. DTE-1-7 (b)(Att)
Exh. DTE-1-7 (a)(Supp)(Att)
Exh. DTE-1-7 (b)(Supp)(Att)
Exh. DTE-1-11 (Att) **CD-ROM**
Exh. DTE-1-12 (Att) **CD-ROM**
Exh. DTE-1-13 (Supp)
Exh. DTE-1-13(a)(Att)
Exh. DTE-1-13(c)(Att)
Exh. DTE-1-13(d)(Att)
Exh. DTE-1-13(f)(Att)
Exh. DTE-1-13(g)(Att)
Exh. DTE-1-13(a)(Supp)(Att)
Exh. DTE-1-13(c)(Supp)(Att)
Exh. DTE-1-13(d)(Supp)(Att)
Exh. DTE-1-13(f)(Supp)(Att)
Exh. DTE-1-13(g)(Supp)(Att)
Exh. DTE-1-14
Exh. DTE-1-15 (REVISED)
Exh. DTE-1-16(a)(Att) through DTE-1-16(e)(Att)
Exh. DTE-2-1(Att)
Exh. DTE-2-2(Att)
Exh. DTE-2-5(Att)
Exh. AG-1-4(b)(Att)
Exh. AG-1-21(Att)
Exh. AG-1-31(Att)
Exh. AG-1-35(a)(Att)
Exh. AG-1-35(b)(Att)
Exh. AG-1-41(Att)
RR-DTE-3(a)(Att)
RR-DTE-3(b)(Att)
RR-DTE-4(a)(Att)
RR-DTE-4(c)(Att)
RR-DTE-4(d)(Att)
RR-DTE-4(f)(Att)
RR-DTE-4(g)(Att)
RR-AG-2 (Att)
RR-AG-2-1(a)(Att) through AG-2-1(d)(Att)
RR-AG-2-2(Att)